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11
12 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

13 TANG'S COPRORATION,

14 Plaintiff,

15 v.

16 IMPERIAL PACIFIC INTERNATIONAL
17 (CNMI), LLC,

18 Defendant.

CIVIL CASE NO. 1:20-CV-00006

**PETITION FOR COSTS AND
ATTORNEYS' FEES**

1 On August 16, 2022, the Court granted Defendant Imperial Pacific International (CNMI),
2 LLC's ("IPI") motion to compel against Plaintiff Tang's Corporation ("Tang's"), including
3 reasonable fees and costs incurred in moving to compel. As part of its ruling, the Court ordered IPI
4 to submit a fee petition no later than August 30, 2022. Through this fee petition, IPI requests that
5 the Court award \$3,985 in attorneys' fees, as outlined below.

6 **I. PROCEDURAL BACKGROUND**

7 On March 30, 2022, IPI served discovery requests on Tang's, including: (i) Defendant's
8 First Set of Requests for Production, (ii) Defendant's First Set of Interrogatories, and (iii) Notice of
9 Deposition of Tang's Corporation Pursuant to Fed. R. Civ. P. 30(b)(6). *See* Declaration of Samuel
10 W. Salyer in Support of Petition for Attorneys' Fees and Costs ("Salyer Decl.") at ¶¶2-4. On May
11 19, 2022, Tang's served (i) Plaintiff's Responses to Interrogatories, and (ii) Plaintiff's Responses to
12 Request for Production. *See id.* at ¶¶5-6. On May 26, 2022, Tang's provided IPI with 446 pages of
13 non-Bates stamped electronic documents constituting its discovery production. *See id.* at ¶7. On
14 June 6, 2022, IPI conducted a 30(b)(6) deposition of Tang's on June 6, 2022. *See id.* at ¶8. The
15 deponent, Kevin Tang, made reference to several documents that had not been produced as part of
16 Tang's discovery production. Counsel for Tang's provided counsel for IPI with a copy of one of
17 these documents during a break in the deposition. *See id.*

18 On June 8, 2022, IPI notified Tang's that, based on the 30(b)(6) deposition testimony, IPI
19 believed Tang's discovery productions were deficient in several ways. IPI noted that the fact
20 discovery motions deadline was approaching, and proposed that the parties stipulate to extend that
21 deadline to allow Tang's additional time to provide the responsive documents. *See id.* at ¶9. On
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1 June 13, 2022, IPI again proposed to extend the fact discovery motions deadline to June 29, 2022.
2 *See id* at ¶10. Tang’s agreed, and the Court granted the parties’ stipulation, entering the Second
3 Amended Scheduling Order. ECF 81, 82.

4 Having received no production from Tang’s, on June 23, 2022, IPI contacted Tang’s and
5 requested to meet and confer in advance of the June 29, 2022, fact discovery motions deadline. *See*
6 *id* at ¶11. On June 28, 2022, the parties met and conferred regarding IPI’s requests for discovery
7 production. Counsel for Tang’s stated that he had no objections to IPI’s requests. *See id* at ¶12.
8 The parties stipulated to further extend the fact discovery motions deadline to allow additional time
9 for Tang’s to respond to discovery. ECF 83. The Court granted this stipulation and entered the
10 Third Amended Scheduling Order on June 30, 2022. ECF 84.

11 On July 8, 2022, still having received no further documents, IPI contacted Tang’s to inquire
12 about the status of the production, and noted that it would preserve its rights by filing a motion to
13 compel if had not received the requested responsive materials (or if the parties had not agreed to an
14 extension) by July 13, 2022. *See id* at ¶13. On July 12, 2022, IPI again contacted Tang’s, stating
15 that IPI intended to move to compel if it did not receive the discovery production by the following
16 day. *See id* at ¶14. On July 13, 2022, counsel for IPI and Tang’s again met and conferred.
17 Following this conversation, Tang’s produced one document totaling eight pages. *See id* at ¶16.

18 On August 16, 2022, the Court held a hearing at which it granted IPI’s motion to compel
19 and ordered IPI to submit a fee by no later than August 30, 2022. ECF 92.

20 **II. LEGAL STANDARD**

21 If a motion to compel is granted, the district court “must, after giving an opportunity to be
22 heard, require the party or deponent whose conduct necessitated the motion, the party or attorney
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1 advising that conduct, or both to pay the movant's reasonable expenses incurred in making the
2 motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A).

3 Once a court has determined that attorneys' fees and costs should be awarded, it determines
4 the reasonableness of the proposed amounts in a two-step process. First, the court calculates the
5 attorneys' fees using the lodestar method, multiplying the number of hours reasonably expended by
6 the party by a reasonable hourly rate. *See Morales v. City of San Rafael*, 96 F.3d 359, 363-64 (9th
7 Cir. 1996). To determine if the rate is reasonable, the court must identify the prevailing hourly rate
8 for the relevant community. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008).
9 Generally, the relevant community is the forum in which the district court sits, though a court may
10 rely on prevailing rates from outside the forum if local counsel is unable or unwilling to perform.
11 *Id.* Once the relevant community is determined, the court then determines the appropriate rate for
12 the attorney by looking to "the rate prevailing in the community for similar work performed by
13 attorneys of comparable skill, experience, and reputation." *Id.* The burden is on the party
14 requesting the fees to provide satisfactory evidence of the prevailing market rate. *Id.* at 980 (citing
15 *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984)). After calculating the lodestar rate, the court may
16 assess whether to adjust it up or down based on other considerations, though only in rare cases
17 should the rate be adjusted. *Morales*, 96 F.3d 363-64.

18 To determine the reasonableness of the hours worked, the court will require that the party
19 requesting fees prove that it exercised billing judgment for the hours billed. *Vogel v. Harbor Plaza*
20 *Center, LLC*, 893 F.3d 1152, 1160 (9th Cir. 2018). The court should exclude "hours that are not
21 reasonably expended because they are excessive, redundant or otherwise unnecessary." *Van*
22 *Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000 (internal citations
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omitted). The party opposing the fee application has the burden to rebut the fee application though “submission of evidence to the district court challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party in its submitted affidavits.” *Gates v. Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992). The time spent establishing the right to and amount of the fee should be included in the lodestar calculation. *Camacho*, 523 F.3d at 981. This Court has also concluded that “efforts to obtain discovery required under Rule 37(a)(1) are part of bringing a motion to compel discovery, and therefore expenses incurred trying to resolve discovery disputes prior to filing the motion will be included in calculating a fee award under Rule 37(a)(5)(A).” *Wang et al. v. Gold Mantis Construction Decoration (CNMI), LLC*, Order Granting Pls.’ Att’ys’ Fees and Costs for Countermotion to Compel Disc., 1:18-cv-00030, (D. N. Mar. I. May 5, 2020) ECF 106 at *11.

III. ARGUMENT

A. Reasonable Hourly Rate

For this matter, the relevant community is the forum in which the district court sits—the CNMI. Particularly given the small size of the legal community in the CNMI, reasonable hourly rates may be proved by reference to other fee awards and the district court may rely on its own knowledge and experience regarding hourly rates. *See Sam K. ex rel Diane C. v. Hawaii Dept. of Educ.*, 788 F.3d 1033, 1041 (9th Cir. 2015) (internal citations omitted).

Mr. Salyer has practiced for over nine years and has unique experience that qualifies him to represent IPI, a domestic entity that is wholly owned by a foreign entity, in this and other matters. *See* Salyer Decl. ¶¶17-20. He has experience practicing in China, France, and the United States, and has represented international clients—including clients without significant experience with the

1 U.S. legal system—in complex matters involving U.S. courts and U.S. regulators. *Id.* While Mr.
2 Salyer bills and receives payment at an hourly rate that exceeds the rates typically charged in the
3 CNMI, for the purpose of this fee application IPI requests an hourly rate of \$225 for Mr. Salyer.
4 This rate is reasonable given Mr. Salyer’s experience representing international clients, as well as
5 the rates awarded by this Court to other attorneys with similar levels of experience. *See, e.g., Xuan*
6 *v. Joo Yeon Corp. and Se Young Corp.*, 1:12-cv-00032 (D. N. Mar. I. Jan. 27, 2017), ECF No. 226
7 (awarding \$250 per hour to attorneys with over 15 years’ experience and \$175 per hour to attorney
8 with six years’ experience in CNMI, and referencing declaration by David Banes that his firm’s
9 billable rate for associates is from \$175 to \$250 per hour).

10 Mr. San Nicolas has practiced for nearly 18 years in the CNMI. His hourly rate is \$250,
11 which is reasonable given his experience and the fees awarded by this Court to other attorneys with
12 similar levels of experience. *See id.*

13 *B. Reasonable Hours.*

14 Defendant requests a fee award for 16.6 hours performed by Mr. Salyer. These hours were
15 reasonably expended as part of IPI’s efforts to compel Tang’s to respond to discovery requests and
16 reflect the exercise of billing judgment. The hours spent by Mr. Salyer are supported by Mr.
17 Salyer’s Declaration, including contemporaneous time records in increments of one-tenth of an
18 hour, with clear descriptions of the work performed. *See* Salyer Decl. ¶21. In addition, Plaintiff
19 request compensation for 1.0 hours performed by Mr. San Nicolas in attending the hearing on the
20 motion to compel.

21 As detailed above, IPI’s was required to communicate with Tang’s on multiple occasions
22 regarding its deficient discovery production, to draft and file multiple motions for extensions to
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allow Tang's additional time to fulfill its discovery obligations, and to prepare a motion to compel discovery, including an attorney declaration. In an effort to avoid duplicative and unnecessary fees and costs, Mr. Salyer performed these tasks with Mr. San Nicolas's efforts limited to advice regarding strategy and local practice, as well as attending the hearing on the motion to compel. The limited time spent on this matter by co-counsel Kevin Abikoff and prior counsel J. Chesley Burruss has been entirely written off.

A table showing the total calculation of fees requested by IPI is below:

Attorney	Rate	Hours	Total
Samuel W. Salyer	\$225	16.6	\$3,735
Joey P. San Nicolas	\$250	1	\$250

IV. CONCLUSION

In conclusion, IPI requests \$3,985 in attorneys' fees as a reasonable award for the time incurred in connection with its successful motion to compel.

Respectfully submitted this 30th day of August 2022.

/s/

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